

SENATE BILL

No. 623

Introduced by Senator Newman
(Coauthors: Senators Cortese and Dodd)
(Coauthor: Assembly Member Mullin)

February 18, 2021

An act to amend Sections 27565 and 31490 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 623, as introduced, Newman. Electronic toll and transit fare collection systems.

Existing law requires the Department of Transportation, in cooperation with the Golden Gate Bridge, Highway and Transportation District and all known entities planning to implement a toll facility, to develop and adopt functional specifications and standards for an automatic vehicle identification system in compliance with specified objectives, and generally requires any automatic vehicle identification system purchased or installed after January 1, 1991, to comply with those specifications and standards. Existing law authorizes operators of toll facilities on federal-aid highways engaged in an interoperability program to provide only specified information regarding a vehicle's use of the toll facility.

This bill would authorize those operators to provide instead only the information specified in functional specifications and standards adopted by the department and operators of toll facilities in this state on federal-aid highways for purposes of interstate interoperability.

Existing law prohibits a transportation agency from selling or providing to any other person or entity personally identifiable information, as defined, of a person who subscribes to an electronic toll or electronic transit fare collection system or who uses a toll facility that employs an electronic toll collection system, except as specified.

Existing law requires a transportation agency that employs an electronic toll collection or an electronic transit fare collection system to establish a privacy policy regarding the collection and use of personally identifiable information and provide to subscribers of that system a copy of the privacy policy.

This bill would specify that the transportation agency is required to provide a hard copy of, or internet link to, the privacy policy, as specified. The bill would require that the privacy policy include the process by which a subscriber provides opt-in consent to the use of their personally identifiable information for a specified purpose and the process for revoking that consent.

Existing law requires a transportation agency to make every effort to purge the personal account information of an account that is closed or terminated. Under existing law, that requirement does not prohibit a transportation agency, or its designee, from performing financial and accounting functions.

This bill would instead specify that the requirement does not prohibit a transportation agency from using or providing personally identifiable information for specified purposes, which the bill would assert is declarative of existing law.

Existing law prohibits a transportation agency from using a nonsubscriber's personally identifiable information obtained using an electronic toll collection or electronic transit fare collection system to market products or services to that nonsubscriber, except marketing toll-related products or services in a notice of toll evasion.

This bill would delete that exception and instead expressly authorize a transportation agency to include marketing for toll-related products or services in a notice related to a toll evasion or an invoice or receipt for pay-by-plate toll payment sent to a subscriber or nonsubscriber, which the bill would assert is declarative of existing law.

This bill would make various technical changes, some of which the bill would assert are declarative of existing law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 27565 of the Streets and Highways Code
- 2 is amended to read:

1 27565. (a) The department, in cooperation with the district
2 and all known entities planning to implement a toll facility in this
3 state, shall develop and adopt functional specifications and
4 standards for an automatic vehicle identification ~~system~~, *system*
5 *for intrastate interoperability*, in compliance with all of the
6 following objectives:

7 (1) In order to be detected, the driver shall not be required to
8 reduce speed below the applicable speed for the type of facility
9 being used.

10 (2) ~~The~~ A vehicle owner shall not be required to purchase or
11 install more than one device to use on all toll facilities, but may
12 be required to have a separate account or financial arrangement
13 for the use of these facilities.

14 (3) The facility operators shall have the ability to select from
15 different manufacturers and vendors. The specifications and
16 standards shall encourage multiple bidders, and shall not have the
17 effect of limiting the facility operators to choosing a system that
18 is able to be supplied by only one manufacturer or vendor.

19 (b) Except as provided in subdivision (c), ~~any~~ *an* automatic
20 vehicle identification system purchased or installed after January
21 1, 1991, shall comply with the specifications and standards adopted
22 pursuant to subdivision (a).

23 (c) Subdivision (b) does not apply to an interim automatic
24 vehicle identification system for which a contract is entered into
25 between an entity planning to implement a toll facility and the
26 supplier of the interim system ~~prior to~~ *before* January 1, 1994, if
27 both of the following requirements are met:

28 (1) The department has made a written determination that the
29 installation and operation of the interim system will expedite the
30 completion of the toll facility and its opening to public use.

31 (2) The entity planning to implement the toll facility has entered
32 into an agreement with the department to install, within five years
33 after any portion of the toll facility is opened for public use, an
34 automatic vehicle identification system meeting the specifications
35 and standards adopted pursuant to subdivision (a).

36 (d) The automated vehicle identification system developed by
37 the department pursuant to subdivision (a) shall be capable of
38 identifying various types of vehicles, including, but not limited to,
39 commercial vehicles.

(e) On and after the date specified in the federal Moving Ahead for Progress in the 21st Century Act for implementation of interoperability of electronic toll collection on federal-aid highways, operators of toll facilities on federal-aid highways may fully implement technologies or business practices that provide for the *interstate* interoperability of electronic toll collection programs consistent with federal law. Operators of toll facilities on federal-aid highways engaged in an *interstate* interoperability program may provide only the following information regarding a vehicle's use of the toll facility, *specified in functional specifications and standards adopted by the department and operators of toll facilities in this state on federal-aid highways for purposes of interstate interoperability* and shall otherwise comply with all federal and state privacy protection laws, including, but not limited to, Section ~~31490~~: 31490.

~~(1) License plate number.~~

~~(2) Transponder identification number.~~

~~(3) Date and time of transaction.~~

~~(4) Identity of the agency operating the toll facility.~~

SEC. 2. Section 31490 of the Streets and Highways Code is amended to read:

31490. (a) Except as otherwise provided in this section, a transportation agency may not sell or otherwise provide to any other ~~person~~ *individual* or entity personally identifiable information of any person who subscribes to an electronic toll or electronic transit fare collection system or who uses a toll bridge, toll lane, or toll highway that employs an electronic toll collection system.

(b) A transportation agency that employs an electronic toll collection or an electronic transit fare collection system shall establish a privacy policy regarding the collection and use of personally identifiable information and provide to subscribers of that system a *hard* copy of the privacy ~~policy~~ *policy, or internet link to the privacy policy*, in a manner that is conspicuous and meaningful, such as by providing a copy ~~to of, or link to,~~ the ~~subscriber privacy policy~~ with the transponder, electronic transit pass, or other device used as an electronic toll or transit fare collection mechanism, ~~or, if the system does not use a mechanism,~~ *in an email acknowledging that the subscription process was successfully completed, or with the application materials.* A transportation agency shall conspicuously post its privacy policy

on its ~~Internet Web site~~ *internet website*. For purposes of this subdivision, “conspicuously post” has the same meaning as that term is defined in paragraphs (1) to (4), inclusive, of subdivision (b) of Section 22577 of the Business and Professions Code. The *privacy* policy shall include, but need not be limited to, a description of the following:

(1) The types of personally identifiable information that is collected by the agency.

(2) The categories of third-party ~~persons~~ *individuals* or entities with whom the agency may share personally identifiable information.

(3) The process by which a transportation agency notifies subscribers of material changes to its privacy policy.

(4) The effective date of the privacy policy.

(5) The process by which a subscriber may review and request changes to any of ~~his or her~~ *their* personally identifiable information.

(6) *The process by which a subscriber provides opt-in consent to the use of their personally identifiable information pursuant to subdivision (j) and the process for revoking that consent. This process shall be described in a clear manner.*

(c) A transportation agency may, within practical business and cost constraints, store only personally identifiable information of a person such as, to the extent applicable, the account name, credit card number, billing address, vehicle information, and other basic ~~account~~ information required to perform ~~account~~ functions such as billing, account settlement, or enforcement activities. All other information shall be discarded no more than four years and six months after the billing cycle has concluded, the bill has been paid, and all toll or fare violations, if applicable, have been ~~resolved~~. *resolved, except as required to comply with the requirements of a litigation hold.*

(d) A transportation agency shall make every effort, within practical business and cost constraints, to purge the personal account information of an account that is closed or terminated. ~~In no case shall a~~ A transportation agency *shall not* maintain personal information more than four years and six months after the date an account is closed or ~~terminated~~. *terminated, except as required to comply with the requirements of a litigation hold.*

(e) (1) A transportation agency may make personally identifiable information of a person available to a law enforcement agency only pursuant to a search warrant. Absent a provision in the search warrant to the contrary, the law enforcement agency shall immediately, but in any event within no more than five days, notify the person that ~~his or her~~ *their* records have been obtained and shall provide the person with a copy of the search warrant and the identity of the law enforcement agency or peace officer to whom the records were provided.

(2) This section does not prohibit a peace officer, as defined in Section 830.1 or 830.2 of the Penal Code, when conducting a criminal or traffic collision investigation, from obtaining personally identifiable information of a person if the officer has good cause to believe that a delay in obtaining this information by seeking a search warrant would cause an adverse result, as defined in subparagraphs (A) to (E), inclusive, of paragraph (2) of subdivision (a) of Section 1524.2 of the Penal Code.

(f) This section does not prohibit a transportation agency in subdivision (a) from providing aggregated traveler information derived from collective data that relates to a group or category of persons from which personally identifiable information has been removed.

(g) This section does not prohibit a transportation agency, with respect to an electronic toll collection system, from providing the license plate number of an intermodal chassis to the owner of the chassis for purposes of locating the driver of the chassis in the event the driver fails to pay a toll.

(h) This section, with respect to an electronic toll collection system, does not prohibit a transportation agency from sharing data with another transportation agency solely to comply with interoperability specifications and standards adopted pursuant to *subdivision (a) or (e) of Section 27565* regarding electronic toll collection devices and technologies. A third-party vendor may not use personally identifiable information obtained under this subdivision for a purpose other than described in this subdivision.

~~(i) Subdivision (d) This section shall not prohibit a transportation agency, or its designee, agency from performing financial and accounting functions such as using or providing personally identifiable information for purposes of billing, account settlement, account maintenance, collection, enforcement, system optimization,~~

1 *device distribution, auditing, issuing public safety or travel alerts,*
2 *conducting customer satisfaction surveys, or other—financial*
3 *activities required to operate and manage the electronic toll*
4 *collection system or transit fare collection system. This section,*
5 *with respect to electronic transit fare collection systems, does not*
6 *prohibit the sharing of data between transportation agencies for*
7 *the purpose of interoperability between those agencies. A*
8 *third-party vendor—may shall not use personally identifiable*
9 *information obtained under this subdivision for a purpose other*
10 *than as described in this subdivision.*

11 (j) This section does not prohibit a transportation agency from
12 communicating, either directly or through a contracted third-party
13 vendor, to subscribers of an electronic toll collection system or an
14 electronic transit fare collection system about products and services
15 offered by, the agency, a business partner, or the entity with which
16 it contracts for the system, using personally identifiable information
17 limited to the subscriber’s name, address, and electronic mail
18 address, provided that the transportation agency has received the
19 subscriber’s—~~express-written~~ *opt-in* consent to receive the
20 communications.

21 (k) (1) A transportation agency—~~may~~ *shall* not use a
22 nonsubscriber’s personally identifiable information obtained using
23 an electronic toll collection or electronic transit fare collection
24 system to market products or services to that nonsubscriber. ~~This~~
25 ~~subdivision shall not apply to~~

26 (2) *Notwithstanding subdivision (j) and paragraph (1), a*
27 *transportation agency may include marketing for toll-related*
28 *products or services—contained in a notice—of related to a toll*
29 *evasion issued pursuant to Section 23302 of the Vehicle Code; or*
30 *an invoice or receipt for pay-by-plate toll payment sent to a*
31 *subscriber or nonsubscriber.*

32 (l) For purposes of this section, “transportation agency” means
33 the Department of Transportation, the Bay Area Toll Authority,
34 any entity operating a toll bridge, toll lane, or toll highway within
35 the state, any entity administering an electronic transit fare
36 collection system and any transit operator participating in that
37 system, or any entity under contract *at any level* with any of the
38 ~~above entities; entities for purposes of an activity specified in~~
39 *subdivision (e), (g), (h), (i), (j), or (k).*

(m) For purposes of this section, “electronic toll collection system” is a system ~~where~~ *in which* a transponder, camera-based vehicle identification system, or other electronic medium is used to deduct payment of a toll from a subscriber’s account or to establish an obligation to pay a toll, and “electronic transit fare collection system” means a system for issuing an electronic transit pass that enables a transit passenger subscriber to use the transit systems of one or more participating transit operators without having to pay individual fares, where fares are instead deducted from the subscriber’s account as loaded onto the electronic transit pass.

(n) For purposes of this section, “person” means any person who subscribes to an electronic toll collection or electronic transit fare collection system or any person who uses a toll bridge, toll lane, or toll road that employs an electronic toll collection system.

(o) For purposes of this section, “personally identifiable information” means any information that identifies or describes a person including, but not limited to, travel pattern data, address, telephone number, email address, license plate number, photograph, bank account information, or credit card number. For purposes of this section, with respect to electronic transit fare collection systems, “personally identifiable information” does not include photographic or video footage.

(p) For purposes of this section, “interoperability” means the sharing of data, including personally identifiable information, across multiple transportation agencies for the sole purpose of creating *and operating* an integrated transit fare payment system, integrated toll payment system, or both.

(q) (1) In addition to any other remedies provided by law, a person whose personally identifiable information has been knowingly sold or otherwise provided in violation of this section may bring an action to recover either actual damages or two thousand five hundred dollars (\$2,500) for each individual violation, whichever is greater, and may also recover reasonable costs and attorney’s fees.

(2) A person whose personally identifiable information has been knowingly sold or otherwise provided three or more times in violation of this section may bring an action to recover either actual damages or four thousand dollars (\$4,000) for each individual

1 violation, whichever is greater, and may also recover reasonable
2 costs and attorney's fees.

3 (r) Nothing in subdivisions (c) and (d) shall preclude compliance
4 with a court order or settlement agreement that has been approved
5 on or before April 25, 2010.

6 (s) A transportation agency that employs an electronic toll
7 collection or electronic transit fare collection system may impose
8 an administrative fee on persons who use those systems in an
9 amount sufficient to cover the cost of implementing this section.

10 SEC. 3. (a) Except for the amendment of subdivision (e), but
11 including both additions of "interstate" in that subdivision, the
12 amendments of Section 27565 of the Streets and Highways Code
13 made by this act do not constitute a change in, but are declaratory
14 of, existing law.

15 (b) Except for the amendments of subdivisions (b), (c), and (j),
16 the amendments of Section 31490 of the Streets and Highways
17 Code made by this act do not constitute a change in, but are
18 declaratory of, existing law.